

REMARKS

Responsive to the non-final office action mailed September 2, 2005, please consider the following remarks. For the Examiner's convenience, a complete listing of all claims is attached as an Appendix to this Response. No claims have been amended or cancelled.

The Office Action rejects claims 1-432 under section 112, second paragraph as allegedly being indefinite due to an alleged "undue multiplicity of claims by virtue of the unreasonable number of claims presented which tend to confuse, obscure, and becloud the claimed invention."

Applicants respectfully traverse this rejection. The MPEP section cited and the caselaw contained therein states that the Office must make a finding that there are repetitious and multiplied claims before a rejection under section 112, second paragraph is proper. Not only has the Office failed to identify any repetitious or multiplied claims, Applicants submit that such the claims were prepared to avoid repetition. In *In re Chandler*, 319 F.2d 211, 225 (CCPA 1963), the Court found that the claims did not "differ in material substance." In *In re Flint*, 411 F.2d 1353, 1357 (CCPA 1969), the Court affirmed an undue multiplicity rejection by the Office only where the Office has set forth "'typical examples of substantial duplication or lack of material differentiation,' discussed the relative complexity of the invention, alleged a lack of difference in scope of the claims, and referred to representative prior art."

The Office Action in this case does nothing of the sort. It merely points out the number of claims in the application as being too many.

The above-referenced patent application represented a major advance in the manner of managing energy-related devices with many different facets to the invention. Applicants paid the filing fees for all 432 claims and therefore, should be entitled to a proper examination of those claims on the merits. Moreover, the Office Action's indication that there may be a number

of inventions presented does not appear to be a restriction and therefore, a response is not deemed required at this time.

Provisional Election of 25 Claims

By providing an election of 25 claims as the Office Action requires, Applicants do not concede the propriety of the undue multiplicity rejection. Moreover, Applicants have not cancelled the remaining claims because an appropriate argument has been presented why the above rejection is improper.

Nevertheless, to advance prosecution of this case, Applicants hereby elect claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198 and 331 without traverse. It is believed that all claims are directed to a single invention within the context of restriction practice.

CONCLUSION


An indication of allowance of all claims is earnestly solicited. Early notification of a favorable consideration is respectfully requested. It is believed that no fees are required with this response. However, the Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required now or hereafter, or credit any overpayment, to Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

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By:



Brian M. Buroker
Registration No. 39, 125

HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Suite 1200
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201